HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.2641 of 1998

11.6.2007

Between

R.Rajanna ..Petitioner

AND

APSRTC represented by its Regional Manager, Nizamabad and others ..Respondents

:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.2641 of 1998

In the present writ petition, the controversy raised between the parties is in a very narrow compass. It is not in dispute that the writ petitioner herein was originally engaged as a Driver in Nizamabad Division of the A.P.S.R.T.C. on daily wage basis, but however, the management of A.P.S.R.T.C. has taken a decision to regularize the services of such of those daily wage Drivers and consequently passed orders through their circular NO.PD-89/1992 dated 22.10.1992 wherein the decision to regularize the services of the daily wage Drivers with effect from 1.8.1993 and to bring them on time scale of pay has been taken and communicated. Pursuant to this decision communicated on 22.10.1992 of the Executive Director (Administration) of the A.P.S.R.T.C., the Divisional Manager, Nizamabad passed orders on 8.9.1993 advising all the Depot Managers to issue regular orders of appointment to the various Drivers working on daily wage basis in accordance with Regulation No.17 of the A.P.S.R.T.C. Employees' (Recruitment) Regulations, 1966 and to bring them on to the time scale of pay 1125-35-1300-45-1885-50-1935 with usual allowances. It is not in dispute that the name of the writ petitioner – Rajanna figured in the list of 34 names mentioned in the order dated 8.9.1993 of the Divisional Manager at Serial No.28. However, the following condition has been incorporated in the order dated 8.9.1993 which reads as follows:

> "All the Depot Managers are advised to ensure if any one of the above named daily wage Drivers are terminated or kept under put off duty prior to the date of issue of this order, they shall not be appointed and their names will have to be intimated to this office immediately."

The bus driven by the writ petitioner allegedly met with a fatal accident on 4.9.1993 and consequently, he had been put off the duty with effect from 10.9.1993 and subsequently based upon the findings recorded at the enquiry, he had been inflicted with the punishment of removal from service by an order passed on 22.2.1994. That order of punishment was the subject matter of consideration before the Labour Court in the Industrial Dispute raised by the writ petitioner – I.D.No.64 of 1995 and ultimately, the said Industrial Dispute came to be resolved through the Award passed on 7.1.1997, setting aside the orders of removal and ordering reinstatement of the writ petitioner into service with all benefits like continuity of service. But however, the Labour Court had ordered that the writ petitioner be not paid the backwagses for the period of absence occasioned ever since the date of his removal. This Award passed by the Labour Court in I.D.No.64 of 1995 was accepted by the management of the A.P.S.R.T.C. and the writ petitioner came to be reinstated back into service on 23.7.1997. Thereafter, the management has regularized his services with effect from 1.8.1998, inasmuch as the writ petitioner was treated as a daily wage driver upon his reinstatement on 23.7.1997 as it was considered that he had been put off duty immediately after the fatal accident occasioned on 4.9.1993 and ultimately the orders passed on 8.9.1993 by the Divisional Manager, Nizamabad

ordering regularization of his service along with 33 others with effect from 1.8.1993 had not been actually given effect to. However, the order dated 8.9.1993 passed by the Divisional Manager had clearly incorporated a clause that such of those daily wage Drivers who are put off the duty shall not be appointed on regular basis and be brought on to the time scale and because of this condition incorporated in the order dated 8.9.1993 of the Divisional Manager, the writ petitioner's services have not been regualrised and hence, upon his reinstatement, he is treated to be continuing as daily wage Driver only. It is therefore sought to be sustained by the learned Standing Counsel for the A.P.S.R.T.C. that the decision to regularize the services with effect from 1.8.1998 subsequent to his reinstatement pursuant to the order passed by the Labour Court in the Industrial Dispute does not call for any exception.

I am afraid that the contention canvassed by the learned Standing Counsel for the A.P.S.R.T.C. is untenable for, the decision was taken by the A.P.S.R.T.C. management to regularize the services of such daily wage Drivers with effect from 1.8.1993 and as was announced through a circular dated 22.10.1992 of the Executive Director (Administration), A.P.S.R.T.C., Hyderabad, they are required to be brought on to the regular scale of pay with effect from that date. The fact that the writ petitioner was involved in a fatal accident and consequently was put off the duty with effect from 10.9.1993 is of no consequence. In fact, the order dated 8.9.1993 of the Divisional Manager, Nizamabad Division of A.P.S.R.T.C. which incorporated the said clause, makes it clear by pointing that if any one of the daily wage Drivers whose name has been incorporated in the said order, if he is already terminated or kept

under put off duty prior to the date of issue of the order, he shall not be appointed on regular basis. Therefore, all such daily wage Drivers who are on duty as of 8.9.1993 are liable to derive the benefit of regular appointment with effect from 1.8.1993. As is noticed supra, the writ petitioner has been put off duty with effect from 10.9.1993 which is proximately close to the orders dated 8.9.1993 issued by the Divisional Manager. Thus looking at the whole fact situation from this angle, the writ petitioner was in fact entitled to be treated to have been appointed as regular Driver in terms of Regulation 17 of the A.P.S.R.T.C. Employees' (Recruitment) Regulations and consequently, the writ petitioner is entitled to have been brought on regular scale of pay with effect from 1.8.1993 along with others. Therefore, when the issue relating to his reinstatement back to duty as a measure of compliance of the award passed by the Labour Court in I.D.No.64 of 1995 did arise, the writ petitioner could not have been treated as a daily wage Driver on 23.7.1997. His status prior to his removal on 22.2.1994 was liable to be treated as a Driver appointed on regular basis, but not as daily wage Driver. Therefore, the A.P.S.R.T.C. had committed an error in reinstating the writ petitioner back to duty on 23.7.1997 while complying with the order passed by the Labour Court in I.D.No.64 of 1995 in treating him as a daily wage Driver instead of treating him as a regularly appointed Driver. Therefore, the action of the management of the A.P.S.R.T.C. in regularizing his services with effect from 1.8.1998 after his reinstatement back to service is clearly untenable. The services of the writ petitioner are liable to be treated to have been regularized with effect from 1.8.1993 and he is thus entitled for being brought on to the regular scale of pay attached to the post of Driver with effect

from 1.8.1993 itself. In this view of the matter, all that is needed to be done now is to treat the writ petitioner to be a regularly appointed Driver in the services of the A.P.S.R.T.C. with effect from 1.8.1993 and bring him on regular scale of pay attached to the said post with effect from that date along with other similarly situated daily wage Drivers whose names have in fact, been mentioned in the order of the Divisional Manager, Nizamabad dated 8.9.1993. Since the writ petitioner was ordered to be reinstated without any back wages, it follows that the writ petitioner is only entitled to the benefits with effect from 23.7.1997, the date on which he is reinstated. He will not be entitled to any benefits arising from out of the regularization for the period commencing from 10.9.1993, the date on which he was put off the duty ultimately resulting in his removal from service on 22.2.1994 and again in his reinstatement into service on 23.7.1997. Therefore, the first respondent is directed to calculate the benefits with effect from 23.7.1997 duly treating him to have been regularized with effect from 1.8.1993.

With this, the writ petition stands disposed of. No costs.

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NOOTY RAMAMOHANA RAO.J.

11.6.2007
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